Dick Lugar

U.S. Senator for Indiana

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Opening Statement for Hearing on Defense Trade Treaties

U.S. Senate Foreign Relations Committee Ranking Member Dick Lugar made the following statement at today's hearing on the U.S.-U.K. and U.S.-Australia Defense Trade Cooperation Treaties.

Today, we consider pending defense trade treaties with the United Kingdom and Australia. I welcome our witnesses, Mr. Andrew Shapiro, Assistant Secretary of State for Political Military Affairs, and Mr. James Baker, Associate Deputy Attorney General.

This is the Committee's second hearing on the treaties. During our first hearing in May 2008, I noted that I supported the goal of these treaties and believed that, if carefully implemented, they could enhance our national security (http://lugar.senate.gov/sfrc/pdf/Treaties.pdf). During 2008, however, the Bush Administration did not resolve many questions about the treaties' implementation and enforcement. Also unresolved were questions about how the treaties would affect Congressional oversight and the Senate's role in the treaty making process.

In 2003, the Bush Administration requested waivers to provisions in the Arms Export Control Act for bilateral agreements with the United Kingdom and Australia. Those bilateral agreements would have created lists of individuals in the United Kingdom and Australia who qualified to receive unlicensed exports from the United States of what the Bush Administration called "low-sensitivity, unclassified defense items."

Then, in 2007, the Bush Administration negotiated and submitted the treaties that we are discussing today. The treaties loosen restrictions more than the 2003 bilateral agreements. They create a set of new compliance procedures, permit exports of both classified and unclassified items, and apply to both commercial arms sales and to government sales under the Foreign Military Sales program. They also rely on "implementing arrangements" that are not being submitted for advice and consent, even though these arrangements govern the operation of the treaties.

Among the major issues considered at the hearing in 2008 were proposed amendments to the International Traffic in Arms Regulations to implement the treaties in the United States. President Bush promised in his letter transmitting the treaties to the Senate to provide these amendments to us. The final draft regulations, however, did not arrive in the Senate until September 2008.

Unfortunately, neither the implementing arrangements, nor the regulations clarified how enforcement would work. The State Department subsequently stated that the treaties would create a "safe harbor" for defense trade. The Executive Branch insisted it had created a strong system for ensuring enforcement and compliance by relying on classification laws in the UK and Australia. But it is not clear how enforcement will occur in the United States under a safe harbor. We look forward to learning from our witnesses how this safe harbor will work and how it will ensure enforcement in the United States.

A purpose of these treaties is to eliminate export licenses for defense articles being sold to the United Kingdom and Australia. The treaties specify that groups in the United States, the United Kingdom, and Australia may export and receive unlicensed defense articles if they are part of the "Approved Community." The license-free regime applies to classified defense exports and sensitive defense

technologies. Some sensitive defense articles and information would still require licenses; however, the lists of such items may change with time.

The Foreign Relations Committee needs to understand how the Administration will enforce against abuses of the treaties. If a person in the United States Approved Community makes a license-free export, but then diverts the export to unauthorized recipients, what recourse will U.S. law enforcement authorities have? What authorities and resources are needed to effectively investigate and prosecute such conduct?

We also must understand fully how the treaties affect Congress' ability to oversee arms exports. By exempting exports from the Arms Export Control Act, the treaties eliminate advance notification to Congress of exports or retransfers of defense articles exported to the UK and Australia.

Another important point in need of clarification is the procedure required to make significant changes in the treaty regimes after they are approved. Under most treaties approved by the Senate, such changes may only be made by treaty amendments submitted to the Senate for approval. If changes can be made to these defense trade treaties through other means, the Senate may well have concerns.

In the case of these treaties, vital details are contained in so-called "implementing arrangements" rather than in the texts of the treaties. These implementing arrangements address the treaties' scope and effect, including categories of items that may be exported without licenses, persons and entities in each country receiving license-free exports, rules on retransfers of items under the treaties, and arrangements for cooperation in enforcement. The Executive Branch did not submit these "implementing arrangements" to the Senate for its advice and consent. This suggests that changes might be made to critical treaty components without Senate approval. The administration needs to explain in detail its intent in excluding these "implementing arrangements" from advice and consent.

Likewise, the Obama Administration should inform the Committee, and the entire Congress, whether it intends to negotiate similar treaties with additional countries. The Bush Administration stated it would not seek additional defense trade treaties.

I look forward to addressing these important issues with today's witnesses.

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